

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of May 16, 2013 at 7:00 p.m. @ Harmony Hall, 1660 Lakeview Avenue, Dracut.

Continued BOA 2005-13 @ 341 Broadway Road – Comprehensive Permit for 278 rental units with 4 buildings. Petitioner: First Dracut Development, LLC.

Chairman Crowley asked if anyone was present representing the petitioner for this hearing. Nobody came forward. A motion to continue this hearing until later in the evening was made by Mr. Hamilton and seconded by Mr. Pagones. The Board voted unanimously to continue.

Chairman Crowley read the notice again and noted that there is no one present representing the petitioner. He feels the petitioner is not ready; however, it seems to show a distinct lack of interest in their own wellbeing and benefit not to show up for a hearing.

A motion to continue to the June 27, 2013 meeting was made by Mr. Hamilton and seconded by Ms. Hakkila. If it is alright with the Board, Chairman Crowley would like to make it abundantly clear with the property owner and Mr. Lania that failure to appear at the next hearing or serve notice that they are not going to appear, he will step down from the chair and make a motion to deny the Comprehensive Permit. The Board was in agreement. The Board voted unanimously to continue.

2013-4 @ 1112 Broadway Road - Application for a variance from the side yard and screening minimum setback in order to install four (4) solar panels in the detention area as shown on plans. Petitioner: Alton Properties, LLC.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Michael A. Coleman, Professional Land Surveyor dated 4/26/13.

Attorney John Cox will be representing Alton Properties, LLC. He passed out a packet of information to the Board. Chairman Crowley signed one in for the record. On May 8, 2013 the Town Engineer raised some questions pertaining to the solar panel installation and whether the panels would interfere with the detention pond. Attorney Cox has supplied letters and photos in the packet he supplied in response to the Town Engineer's questions.

Attorney Cox explained that Mr. Michael Dow, Vice President of The Dow Company wants to install four (4) solar panels in the detention pond on the side yard of their property. As shown on the site plan the buffer and screening requirement for the side yard would be 80 feet. This would impact a very slight part of the 80 feet and have minimal impact on the detention pond. The detention pond is dry and the panels would be constructed a foot above the highest level of the detention pond. Solar panels are good for the environment and will generate enough power for the entire building on the site approximately 10,000 sq. feet. Attorney Cox gave a history of the Dow Company and noted this would be a passive and good use of the buffer zone.

Attorney Cox noted it came to his attention today that apparently back in 2004/2005 when the Special Permit was granted for the building, the detention pond was supposed to be put in a different part of the property. Apparently the Army Corp. of Engineers met with Mr. Dow and suggested they move the detention pond to where it is today. He thinks Mr. Dow was under the impression at that time that the town was okay with this, but apparently that did not happen. Attorney Cox stated it would seem that what they would also need to try and clear up something that happened some years ago, through no fault of anyone, is possibly amend this request for a variance to include the use of the detention pond. Nothing is going to change for how the land has been used up to now. The only thing that will change will be the four (4) solar panels being installed in the area that is the detention pond area.

Chairman Crowley was in discussions with the Building Inspector and confirm what Attorney Cox mentioned about the fact that the detention pond was installed, at least in part, within the buffer zone which is not allowed. If it were to go forward, it would require a variance to do that.

His suggestion would be to allow the petitioner to amend his petition to include an additional request to vary the current location of the detention pond. Assuming the additional variance is granted, the second issue is whether or not to allow the solar panels be put in which is the original request. Chairman Crowley thinks if they are kept mutually exclusive and the Board feels there is enough evidence to grant the variance on the existing detention pond location, it is not fatal to anything else on the property and resolves that issue. At some point prior to any issuance of any building permit if and when the variance was granted on the solar panels, the petitioner would have to go back to Planning and amend the site plan to amend the current location of the detention pond. Chairman Crowley noted that this case will not be settled or voted on tonight, but continued until the Board's next hearing. He will ask the petitioner to re-advertise the request prior to the next hearing to include the additional variance request. After discussion it was decided to make a motion to include the additional variance for the detention pond location in the original request.

A motion to allow the petitioner to amend his petition to include a second item which is the variance on the location of the detention pond was made by Mr. Stephen Hamilton and seconded by Ms. Ina Hakkila. The Board voted unanimously to approve. Chairman Crowley noted it is now incorporated as part of the variance and the Board will be discussing both, but voting on them separately if the petitioner wishes when the time comes.

Mr. Hamilton asked what the scope of the variance being requested on the side yard in regards to the detention pond. Attorney Cox noted it appears to come pretty close to the lot line. He also noted it is more of a detention area as there is no water in it. Since Dow has been there, the most water that has ever been in the area is about one (1) foot which is after a very, very heavy storm. The detention pond has been in this location since 2005. Mr. Hamilton asked how much of a side yard variance is being requested for the solar panels. Attorney Cox responded that there are four (4) solar panels. The top solar panel one will be totally within the buffer, with the other three just having a small percentage of the solar panels within the eighty (80) foot buffer zone. There was some confusion about how much of a buffer variance was being requested. Chairman Crowley noted the table of zoning request normally would be seen with the required, the proposed and then what

the amount of the variance was being requested. It was agreed that the table of dimensional requirements would be amended to make it clearer on what is being requested.

Chairman Crowley had a discussion with Town Counsel also, as one of the questions he had was what is or isn't allowed in a detention pond. He wants to get in the record the letters included in the packet Attorney Cox presented as follows:

- Letter from the Town Engineering Department dated May 8, 2013 noting the applicant should supply documentation demonstrating the installation of solar panels does not alter the hydraulic and hydrologic function of the detention pond. Additional documentation be provided that insures structural integrity, durability and serviceability of the solar panel assembly while allowing proper access for maintenance of the detention pond to insure original intent and function.
- Letter from Lighthouse Electrical Contracting dated April 14, 2013 addressing the serviceability of the ground-mount solar-electric system proposed for the retention basin.
- Letter from Veitas and Veitas Engineers dated May 14, 2013 regarding the structural integrity of the proposed ground mounted solar array system.
- Letter from The Dow Company dated May 16, 2013 with the calculation of the volume of water displaced and accompanying sketches showing that the panels themselves will be 1 to 1 ½ feet above the highest elevation of the detention pond so they would not interfere with drainage or get flooded.

Chairman Crowley asked why the solar panels are being put in the detention pond and why not locate them elsewhere on the property. Attorney Cox stated the solar panels need to be south facing to the sun. Due to the large trees on the other areas of the property blocking the sun, this was the best area to install the solar panels to get the most maximum use of the sun.

Chairman Crowley would like to continue this hearing until the next meeting so further information could be obtained from the petitioner to give everyone an opportunity to get this information to the Board so it can be reviewed by the Board and Town Counsel prior to the next hearing. He suggests the following:

- The letter from Town Engineering will be incorporated as part of any decision that is made.
- A letter from Town Engineering stating he agrees with the packet of information submitted tonight in response to his letter of May 18, 2013. The Board will incorporate any decision that the approval of the Town Engineer prior to the issuing of a building permit.

Chairman Crowley is going to ask Attorney Cox to write the decision up with the rationale for it in a format that can be presented to the Board for the consideration of their vote that incorporates all of these items. This decision will also be reviewed by Town Counsel prior to voting. The Board will also need some waiver of liability or bonding that protects the town should they need to go in and work on the detention area from any liability with respect to damage to the solar panels.

As discussed previously regarding amending the variance to include the relocation of the detention area, Chairman Crowley would like to see this as a separate decision so that it is not fatal one to the other. The Board can vote on them as two (2) separate decisions. Mr. Hamilton asked if there was anything that prohibits the erection of other structures in

the detention area. Chairman Crowley noted that under 3.14.50 Use of Buffer Area it states; “Buffer areas may not be used for any other purposes including those uses accessory to and in support of the primary use”. One of the reasons why he wants Town Counsel to review this is because there has been some enabling or superseding legislation from the state regarding facilitating the installation of solar panels and wants to make sure this exclusion does not violate that. There was further discussion about the buffer/detention area in regards to the variance. From what is being said, Attorney Cox’s understanding is that if a variance is allowed for the detention pond, then a variance has already been allowed to do work within the buffer zone which would then include the solar panels. Chairman Crowley noted that is correct, but if the variance is granted the way it has been discussed at this hearing, that would also mean that based on the way it is shown, that side would be varied all the way to the street and you could build on the rest of the property by right. He is not sure that the Board wants to allow that and the question then becomes can we condition that variance so that it can be restricted. This is the piece that needs to be looked at. The other question is it is just the buffer we are varying because it says you cannot put the detention area in the buffer zone, but you can put the detention area within the side yard setback. A side yard setback variance is not being asked for. The question remains is the detention pond allowed to impinge on the side yard. This will need to be reviewed.

Chairman Crowley noted it would be part of the requirement that the petitioner amend the Special Permit drawings to reflect the as built condition of the detention pond.

Chairman Crowley noted the counsel for the petitioner will do the following:

- Do the research on the items noted.
- Write up the decision with justification for it in a way and format that reflects the discussion at this hearing.

This would be done in sufficient time for it to be sent to Town Counsel for his review and comment. Then it would be discussed at the next meeting.

Chairman Crowley also asked that the petitioner pick up the tab for another mailing and advertisement due to the nature of the change from the original scope of the request, he wants to make sure that everybody is clear on what is being requested.

Abutters: Who came forward in favor or in opposition?

John and Gloria Smith, 1184 Broadway Road – Interested party.

No one else came forward.

A motion to continue to the June 27, 2013 meeting was made by Mr. Hamilton and seconded by Ms. Hakkila. The Board voted unanimously to continue.

Acceptance of Minutes:

A motion to accept the April 18, 2013 minutes was made by Mr. Michael Pagonis and seconded by Mr. Scott Mallory. The Board voted unanimously, with Mr. Stephen Hamilton abstaining, to accept the minutes.

New Business:

Chairman Crowley had a discussion with Attorney Hall about attending a future meeting to give the Board Members, especially the newer members, an opportunity to ask any questions they might have about the role and function of the Board. He will have the Secretary send out an email to all members to submit any questions or clarifications they would like to review at the meeting. This could include comprehensive permitting, functions and duties of the Board, questions about variances or special permits, Chapter 40 or any other area of the law.

Next Meetings:

Thursday, June 27, 2013.

Adjournment:

A motion to adjourn was made by Ms. Ina Hakkila and seconded by Mr. Stephen Hamilton. The Board voted unanimously to adjourn.

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, Stephen Hamilton

Clerk, R. Scott Mallory

Member, Ina Hakkila

Absent
Member, David Meli

Absent
Alt. Member, Heather Santiago-
Hutchings

Alt. Member, Michael Pagones